



ACEC Member ADVISORY concerning Canada's new Anti-Spam law becoming effective July 1, 2014

WHAT IT MEANS FOR ACEC MEMBERS

- If you send (or cause to be sent) Commercial Electronic Messages (CEM), the law applies
- You must get consent from the recipient of the CEM
- You must identify yourself in the CEM message being sent
- You must provide an opportunity to unsubscribe in the CEM message
- You must ensure that no part of the CEM message is false or misleading
- You should establish a Human Resources policy on anti-spam

What is a Commercial Electronic Message (CEM)?

Any electronic message that encourages participation in a commercial activity, regardless of whether there is an expectation of profit.

Canada's new Anti-Spam law becomes effective July 1, 2014. Additional resources and information can be found at [Industry Canada's website](#). An additional Anti-Spam site was also produced by the Government called www.fightspam.gc.ca.

You can consult these websites which will provide you with information in the following categories:

- About the Law:
 - Fast Facts
 - The Law and Regulations
 - Oversight and management
 - Enforcement
 - FAQs
- Avoid Spam and Electronic Threats:
 - Take the Spam Quiz
 - 5 Things to look for
 - Protect your business
 - Protect yourself
 - Mobile protection toolbox
- Resources:
 - Includes Communications Materials, Publications, Related Links, and Information Bulletins
- Spam Reporting Centre

Who needs to know about this law?

Anyone who makes use of commercial electronic messages (CEM), is involved with the alteration of transmission data, or produces or installs computer programs needs to be aware of this law. Once in force, the new law will apply to any individual or business that sends commercial messages using electronic channels to sell or promote products or services.

What is the law's objective? The law will:

- Require companies to gain a consumer's consent in order to send commercial electronic messages; and
- Help protect consumers and businesses alike by deterring the most damaging and deceptive forms of spam from occurring in Canada, creating a more secure online environment.

What are the main actions that an ACEC Member must do if they send CEMs (in summary)?

- Get the consent of your recipients, and keep records. The legislation requires obtaining "express" or "implied" consent. Express consent means that a person has clearly agreed to receive a CEM before it is sent - you cannot request consent in a CEM. Consent may also be implied in certain situations, for instance if there is an existing business or non-business relationship. In all cases, ensure you understand the consent you have received from your recipients, and keep detailed records in case you are ever asked to prove that consent has been received.
- Identify yourself and anyone you represent in the message. Provide contact information including your business name, postal address and either a telephone number or e-mail address. This information must be accurate and valid for a minimum of 60 days after the message has been sent.
- Include a working mechanism that allows the recipient to unsubscribe from receiving additional messages. This must be at no cost to the recipient.
- Ensure that no part of the CEM is false or misleading, including the sender's identity, subject line, any Web links, or any other material part of the message's text or data.
- Develop a Human Resource policy to inform employees on company directives concerning spam.
- Investigate with your insurance provider to discover any plan coverage being offered to mitigate the risk of the sizeable penalties and fines attached to the anti-spam laws.

WHAT ACEC IS DOING

ACEC staff have attended Canadian Society of Association Executives Anti-Spam workshops in May 2013 and in February 2014 conducted by a legal firm called Pitblado Law, from Winnipeg. The presenter, Brian Bowman, prepared some hand-out materials providing some additional guidance on the Anti-Spam law, and Pitblado has agreed to share these handouts with the ACEC membership.

Please find attached the following information:

1. CSAE Workshop - [Anti Spam Law Handouts](#)
2. CSAE Workshop - [Decision Flow Chart Handout](#)

These handouts will help you in assessing your situation when it comes to commercial electronic messages, and actions you should consider taking to be compliant with the new anti-spam law.

- A. ACEC has identified that it communicates with the membership contacts regularly with newsletters and other electronic messages such as seminar announcements, and these **are considered CEMs**.
- B. ACEC has also identified that it provides member participation lists (hard copy only) from ACEC's marquee events such as the Annual Leadership Summit and the National Awards Gala to Corporate Partners as part of their Sponsorship agreements (cause to be sent), these **are considered CEMs**.
- C. ACEC's Platinum Corporate Partner, based on the level of Sponsorship, is the only partner which receives an electronic listing of members (cause to be sent), and these **are considered CEMs**.
- D. Clients could request hard copy lists of members specializing in a certain field of expertise from ACEC, and a hard copy list of member names and addresses would be generated (labels for mailing) from qualifying members with no email information; these **are not considered CEMs**.

ACEC has a searchable online Membership database which provides information on member firm location, international locations, industry sectors and fields of specialization. Searches also could result in generating a member website address when available. ACEC does not publish member contact email addresses as part of this member search engine.

- A. MEMBERSHIP CEMs – ACEC has identified that the Anti-Spam law applies regarding communications with ACEC members, but “implies consent” exists due to the relationship established as part of the membership. ACEC has ensured that all distributions of CEMs are done with an “**unsubscribe**” opportunity, and ACEC is **identified** as the sender. Membership database renewals also provide an opportunity for member contacts to “**opt-out**” of all commercial electronic messages from ACEC.
- B. EVENT PARTICIPATION LIST CEMs – ACEC has provided an opportunity for participants to have an “**opt-out**” option (to be excluded for mailing lists) when registering for their events.
- C. DATABASE ELECTRONIC LIST CEMs to PLATINUM PARTNER – ACEC provides an opportunity to “**opt-out**” of mailing lists when the member is asked to renew their information in the ACEC database (done annually).

ANTI-SPAM POLICY needs

ACEC consulted with their legal advisors on whether there was a need to add an **anti-spam policy** on its website (and whether it needed to be part of the Privacy Policy).

The legal advisor recommendations:

1. ACEC does not need to post an anti-spam policy on its website;
2. ACEC should develop an ***internal anti-spam policy*** which will be developed in the ACEC Personnel Policies (see examples of items to include in HR Policies– [Employee's Responsibilities](#));
3. The ACEC website could state that any concerns about spam could be directed to ACEC's Privacy Coordinator (designated ACEC person).

DIRECTORS AND OFFICERS LIABILITY

ACEC is currently consulting with its insurance broker to determine whether its insurance policies have clauses to protect Directors and Officers from the potential

liability risk arising from Anti-Spam law penalties. Encon has recently released a “Cyber Security and Privacy Liability Extension” endorsement applicable to Architects and Engineers Professional Liability and Directors and Officers liability, which is being investigated by the broker. (see: [Cyber Security and Privacy Liability Endorsement](#))

Please consult the provided materials and website links for further information. You should also consult with your legal advisors to ensure compliance with the new anti-spam law, and your insurance providers for coverage.